

**BEFORE THE PUBLIC UTILITIES COMMISSION OF THE STATE OF CALIFORNIA**

Order Instituting Rulemaking on the  
Commission's Own Motion to Consider  
Modifications to the Universal Lifeline Telephone  
Service Program and General Order 153.

Rulemaking 98-09-005  
(Filed September 3, 1998)

**ASSIGNED COMMISSIONER'S AND  
ADMINISTRATIVE LAW JUDGE'S RULING  
RESPONDING TO FONES4ALL'S PETITION  
TO MODIFY DECISION 00-10-028**

**Summary**

This ruling requests comment on the issues raised in FONES4ALL's Amended Petition to Modify Decision (D.) 00-10-028, which was filed on April 16, 2002. It also requests comment on how administrative expenses associated with the Universal Lifeline Telephone Service (ULTS) program should be measured and asks for ways to make the Telecommunications Division's (TD) review of carrier requests for reimbursement for administrative expenses associated with the ULTS program ministerial and less contentious.

It examines the fact that ULTS marketing currently is conducted exclusively by the ULTS Marketing Board, and requests comment on whether carriers should be authorized to be compensated for marketing activities. We also propose a pilot project whereby carriers could be granted a "Finder's Fee" for getting new eligible customers on the ULTS program.

## **Background**

The ULTS program provides affordable basic exchange telephone service to low-income residential subscribers. The statewide ULTS program provides basic telephone service at the rate of \$5.34 per month for flat rate service, and \$2.85 for measured rate service, and excludes the surcharges or taxes that are generally applicable to basic telephone service.

The ULTS program, which was first established by statute in 1987, was revised in 1996, by D.96-10-066 to ensure that all local telephone companies, including competitive entrants, would provide ULTS as part of their offering of basic telephone service. Further, in that decision the Commission adopted a “competitively neutral” ULTS cost recovery subsidy program available to both Incumbent Local Exchange Carriers (ILECs) and Competitive Local Exchange Carriers (CLECs). The 1996 revision to the ULTS program permits both CLECs and ILECs to recover the costs related to provisioning ULTS.

The 1996 decision also made a significant change regarding the costs of marketing ULTS service. Prior to 1996, the ILECs were responsible for educating the public regarding the availability of ULTS. Based on concerns that ILEC marketing would not be competitively neutral, the Commission prohibited carriers from recovering marketing costs from the program, and established a ULTS Marketing Board (ULTSMB) to be responsible for all marketing efforts.

In D.96-10-066, the Commission retained its pre-1996 policy with regard to the recovery of revenue lost due to the lower ULTS rate, non-collected surcharges and taxes, and direct administrative costs attributable to ULTS. Regarding lost revenues, the Fund compensates carriers the difference between the tariff rate and ULTS rate. Because ILEC rates are regulated, their subsidy level is effectively capped. However, CLEC basic telephone service rates are not rate-regulated. In 1996, the Commission viewed ULTS as a service that would be

provided incremental to a company's non-ULTS service offerings. It was assumed that the competitive market would provide sufficient incentives to set the price of basic service at reasonable levels. However, a CLEC could establish a basic service rate significantly higher than the ILEC rate so that no non-ULTS customers would purchase service from the CLEC, yet the ULTS program would be required to pay the difference between the higher basic exchange rate and the statewide ULTS rate for all its ULTS customers. CLECs could be created for the sole purpose of providing ULTS service. Those CLECs could then set rates at extremely high levels, and be fully funded by a public program without any Commission oversight as to the appropriateness of claimed costs because CLECs are not rate-regulated. This outcome is not sustainable for the ULTS fund and is not in the public interest.

In D.00-10-028, the Commission again adopted numerous significant modifications and clarifications to the ULTS program. One modification was to limit the amount of "lost revenues" that utilities may recover from the ULTS Fund. Lost revenues consist of the excess of the utility's regular tariffed rates and charges for basic residential service over the lower ULTS rates.

Lost revenues also include those administrative costs that are 1) incremental to the ULTS program, and 2) not recovered elsewhere by the utility. TD was ordered to conduct a workshop to develop a comprehensive list of those cost elements that carriers can recover from the ULTS Fund. TD conducted a workshop on January 31, 2001 and developed a list of specific costs and lost revenues that utilities may recover from the ULTS Fund. The Commission approved the comprehensive list in Resolution T-16591, dated February 21, 2002.

### **FONES4ALL Petition to Modify**

FONES4ALL filed its Petition to Modify D.00-10-028 on March 14, 2001 claiming that under the reimbursement mechanism adopted in D.00-10-028,

carriers are limited to recovering the difference between the serving ILEC's standard residential rate and the ULTS rate, plus the incremental costs of serving ULTS subscribers and certain other costs. According to FONES4ALL, in the case of a reseller, receipt of the difference between the ILEC's rate and the ULTS rate adds nothing to its revenue stream beyond the basic wholesale discount, which does not come close to meeting the costs that FONES4ALL actually incurs in providing ULTS service to its subscribers.

Although allowing recovery of the incremental cost of serving ULTS subscribers might seem to afford carriers with the ability to recover the full cost of furnishing such service, FONES4ALL states that in practice it does not. Measuring the incremental cost of providing ULTS service is extremely difficult, especially for a small carrier that does not have spare personnel and other resources to undertake time-and-motion studies and other procedures required to accurately determine which of its costs are incremental to the ordinary costs of provisioning service to residential subscribers. Moreover, a new carrier, such as FONES4ALL, does not have any "ordinary" costs of service that can serve as a baseline. Consequently, it is almost impossible for such a carrier to determine its incremental costs.

FONES4ALL proposes to replace the reimbursement mechanism adopted by D.00-10-028 with a mechanism whereby all carriers would continue to be reimbursed for lost revenues associated with ULTS connection and migration. However, most carriers would receive reimbursement for all other costs of providing ULTS, including recurring revenue losses, based on the difference between the ULTS rate established by the Commission and a set of presumptively-reasonable rates.

The cost recovery schedule proposed by FONES4ALL in its original Petition to Modify<sup>1</sup> is as follows:

<u>Number of ULTS Subscribers</u>	<u>Subsidy Per Subscriber</u>
• 0-5,000 subscribers	\$50 per month
• 5,001 - 10,000 subscribers	\$40 per month
• 10,001 - 15,000 subscribers	\$30 per month
• 15,001 - 20,000 subscribers	\$20 per month
• 20,001 or more subscribers	Basic ILEC rate

According to FONES4ALL, this reimbursement process would encourage carriers to compete for ULTS subscribers through advertising and outreach programs.

Pursuant to an Administrative Law Judge's ruling issued on October 30, 2001, FONES4ALL was required to submit information in support of its Petition to Modify. FONES4ALL made its Supplemental filing on December 19, 2001.

FONES4ALL filed an Amended Petition on April 16, 2002. In its filing, FONES4ALL proposed a three-year Pilot Project, with presumptively reasonable reimbursement for particular numbers of ULTS customers, which is similar to its original proposal. FONES4ALL proposes that the amount of the ULTS fund that will be used to reimburse CLECs' lost revenues under the Pilot Project should be capped at 10% of the total amount of the ULTS Fund in a fiscal year. FONES4ALL also proposes other protections to ensure that the goals of the Pilot Project are being achieved. While we will not restate FONES4ALL's entire

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<sup>1</sup> FONES4ALL modified its proposal in its Amended Petition to Modify filed on April 16, 2002. FONES4ALL proposes to collapse the third and fourth tiers so that any CLEC with between 10,001 and 20,000 subscribers would receive \$30 per month. CLECs with over 20,200 subscribers would be compensated at two times the ILEC's tariffed rates.

proposal here, parties are invited to comment on FONES4ALL's Amended Petition in the Comments they file in response to this ruling.

For the past several months, FONES4ALL has been submitting claims for its administrative expenses to the Commission's TD; and in the case of FONES4ALL, those expenses include marketing as well as the administrative expenses. The amounts FONES4ALL requests per ULTS customer are orders of magnitude higher than the average of those submitted by all other CLECs. As can be seen in the following table, FONES4ALL's expenses are roughly five times higher than the average for other CLECs for the most recent months available, November 2001 – January 2002. In months prior to that time, FONES4ALL's reimbursement requests were 50 to 100 times higher than the average for other CLECs.

**Operating Expenses Per ULTS Customer**

Month and Year	21 ILEC Average Cost (A)	21 ILECs Total ULTS Customers (B)	8 CLCs Average Cost (C)	8 CLCs Total ULTS Customers (D)	Fones4All Average Cost (E)	Fones4All Total ULTS Customers (F)
09-00	\$0.65	2,650,464	\$2.03	33,523	\$7,576.97	63
10-00	\$1.07	3,243,424	\$1.96	59,737	\$183.64	303
11-00	\$0.67	3,123,679	\$1.01	51,263	\$131.18	461
12-00	\$0.96	3,127,175	\$0.82	53,751	\$111.41	690
01-01	\$0.78	3,127,186	\$0.65	53,933	\$57.08	913
02-01	\$1.07	3,151,484	\$0.86	45,313	\$48.20	1,157
03-01	\$3.51	3,149,127	\$0.97	46,746	\$33.23	1,599
04-01	\$3.26	3,179,160	\$0.72	54,846	\$28.11	1,872
05-01	\$4.25	3,178,040	\$0.75	50,076	\$26.08	2,150
06-01	\$2.25	3,007,523	\$6.59	55,819	\$21.23	2,316
07-01	\$1.03	3,045,256	\$1.08	57,052	\$28.53	2,463
08-01	\$1.18	3,070,441	\$0.98	48,742	\$15.10	2,638
09-01	\$2.58	3,119,682	\$1.00	54,282	\$18.65	2,715
10-01	\$0.49	3,174,541	\$1.50	53,373	\$15.93	2,866
11-01	\$0.70	3,062,272	\$1.62	53,274	\$12.04	2,995
12-01	\$1.07	3,084,578	\$1.87	54,581	\$11.25	3,116
01-02	\$0.72	3,018,685	\$2.44	45,526	\$11.13	3,273

(A)(C)(E) are the average operating expense claim per ULTS customer for the group of carriers.

(B)(D)(F) are the total number of ULTS customers for the group of carriers.

The above data are based on claims filed by carriers.

TD has not authorized payment of FONES4ALL's administrative costs, because TD cannot determine that those expenses are reasonable, given the fact that they are so much higher than those of other CLECs and clearly include marketing expenses.

## **Discussion**

We are concerned that FONES4ALL's proposal could cause a significant drain on the ULTS Fund because the CLEC receives the set amount every single month that a ULTS customer stays on the system, and the monthly reimbursement amount appears to be excessive. However, FONES4ALL raises a valid point, we need to revisit the issue of carrier reimbursement for administrative expenses. Also, since FONES4ALL's administrative expenses include marketing expenses, we need to review and clarify our rules for marketing in the ULTS program.

### **Administrative Expenses**

As described above, D.00-10-028 outlined the administrative expenses that carriers can recover from the ULTS Fund. Ordering Paragraph 18 reads as follows:

The ULTS Fund shall reimburse utilities for the **reasonable** costs and lost revenues they incur to provide ULTS to the extent that such costs and lost revenues meet all of the following criteria: (i) directly attributable to the ULTS program, (ii) would not be incurred in the absence of the ULTS program, and (iii) not recovered by the utility from other sources, such as the rates paid by ULTS customers, the utility's general rates, or the federal programs. (Emphasis added.)

The Commission's TD has an obligation under D.00-10-028 to determine that expenses are reasonable prior to approving those expenses. Also, the Commission has an obligation to all ratepayers in the state that pay the ULTS

surcharge to ensure that the expenses paid to carriers under the program are reasonable.

D.00-10-028 does not provide guidelines to assist TD to make that determination of reasonableness. This is especially problematic in the case of those CLECs, like FONES4ALL, that claim 100 percent of the company's operations are related to provisioning of ULTS, and seek to have the ULTS Fund compensate the company for all of their costs. We need to develop guidelines here so that TD's review will be ministerial, and less contentious. We need to ensure that costs are reasonable and do not jeopardize the fund.

We request comment on the following questions:

- What is the best way to assist TD in determining that a particular local exchange carrier's administrative expense request is "reasonable"?
  - Should the Commission require companies that claim a significant portion of the company's costs as ULTS-related, to submit a cost study for Commission review?
  - What other method should be considered?
- In lieu of company-wide cost studies and Commission review, should the Commission consider alternative means to address compensation, such as:
  - Should FONES4ALL (or any other CLEC whose request is significantly higher than other CLECs) be compensated based on the average granted to other CLECs for a particular month?
  - Should the Commission revisit the idea of having a set fee for administrative expenses per ULTS customer?
  - If so, how should that set fee be established?



### **Marketing**

An October 2001 report released by the Federal Communications Commission states that nearly 10% of California households earning less than \$10,000 per year do not have residential telephone service. Given that statistic, it is clear that we are not meeting the specific needs of extremely low-income customers who satisfy eligibility criteria for assistance. We recognize that telephones are a basic necessity, and that all residents of the state should be able to afford basic telephone service. We have an obligation to do all we can to reach the unserved to ensure that they are aware of the availability of ULTS.

The reasons for the existence of unserved, but qualified Californians are complex. Some Californians live in rural areas where no phone service is available. Others may not be aware that ULTS service is available, due to a language barrier or not having heard of its availability. Some who previously were telephone customers had their service terminated because of unpaid bills.

FONES4ALL makes it clear in its Supplemental Filing that it is engaged in marketing and outreach efforts:

...FONES4ALL field representatives who understand the ULTS program conduct door-to-door canvassing in neighborhoods to explain how the program works. In addition, FONES4ALL conducts multi-cultural notification placement, forges alliances with community based organizations, and has a presence at a number of community events such as cultural festivals and fairs to make potential subscribers aware of ULTS.<sup>2</sup>

According to information received from TD, FONES4ALL seeks reimbursement for these activities as part of its administrative expenses

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<sup>2</sup> Supplement to Petition by FONES4ALL Corporation for Modification of Decision No.00-10-028, December 19, 2001, at 12.

associated with the ULTS program. However, outreach is not one of the items for which the ULTS Fund reimburses carriers at the present time. In D.96-10-066, the Commission determined that, in a competitive environment, a single entity should be responsible for the marketing of ULTS services. The Commission found that approach to be advantageous because no particular carrier is directly benefited by ULTS marketing activities. Instead, potential customers are free to choose which carrier they want to call. Having a single entity also limits the size of the ULTS marketing expenses. In Appendix B of D.96-10-066, the Commission adopted universal service rules, covering the provision of universal service in a competitive environment. Rule 5.A.2 reads as follows:

Individual carriers will no longer be able to claim reimbursement for its marketing expenses associated with the ULTS program...<sup>3</sup>

In other words, under this rule, FONES4ALL and other carriers are precluded from receiving reimbursement for any outreach or marketing expenses they incur. In order for any carrier to receive reimbursement for marketing, we would need to make a change to Rule 5.A.2. Parties should comment on whether that Rule should be changed. In order to ensure that we receive input from all interested parties, we will serve this ruling on the service list of Rulemaking 95-01-020/Investigation 95-01-021, since D.96-10-066 was issued in that docket. Parties should address the following:

- If the Commission were to amend Rule 5.A.2 to allow carriers to perform outreach and marketing functions, how should those activities be reimbursed?
- FONES4ALL presents one scenario whereby CLECs would be compensated on a set amount every month that a particular

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<sup>3</sup> D.96-10-066, Appendix B, Page 7.

ULTS customer stays on the system. Is FONES4ALL's proposal reasonable?

While we recognize that D.96-10-066 would need to be changed before any carrier can be compensated for any marketing expenses, we would like to propose a system whereby carriers would be compensated on a one-time basis, by what we term a "Finder's Fee."

We put the proposal on the table that we implement a pilot project whereby carriers could be compensated, on a one-time basis, for getting new customers on the ULTS program. This is a departure from our current program, in which all outreach and marketing activities are conducted by the ULTSMB. These activities would supplement the activities of the ULTSMB, in an attempt to improve the penetration rate for low-income households. We would like to see if the "hands-on" direct-contact approach performed by carriers, that FONES4ALL describes in its Supplemental Filing, could be an effective way to reach Californians who are eligible for ULTS, but are not on the program.

The Commission adopted a similar plan in its order regarding deployment of low-income energy assistance programs during the energy crisis, D.01-05-033. That decision set up a plan to compensate community-based organizations or other agencies that assisted eligible low-income customers in filling out California Alternate Rates for Energy (CARE) applications. The decision established a "capitation" fee of up to \$12 per eligible CARE enrollment. Interested parties should respond to the following questions:

- Which carriers should be eligible to collect the "Finder's Fee"? Should it include both ILECs and CLECs?
- How could the program be set up so that carriers are not being compensated for churn? Should we include a rule that the customer cannot have been a ULTS customer for the preceding 30 - 90 days?

- What is the appropriate level of a “Finder’s Fee”?
- Should we set a cap on the program to protect the Fund? We propose a \$2 million per year cap.
- What is the best way to ensure carrier compliance with the “Finder’s Fee” program?
- What is the best way to evaluate the success of the “Finder’s Fee” pilot project?
- Should the Commission consider establishing a competitive bidding mechanism to establish a single carrier to be responsible to market to unserved consumers?

We are aware of the incentives that regulatory programs have on the marketplace. Our experience with the unauthorized transfer of utility services (slamming) and unauthorized bill (cramming) enforcement cases have taught the Commission that profits are an inducement for some carriers to engage in fraudulent marketing practices. Here, in this ruling, we are considering reward mechanisms for “marketing.” It is conceivable that our reward mechanism would encourage marketing agents to sign up customers who are not eligible for the ULTS program. Parties should comment on the following:

- Should enrollment be limited to customers who have not had utility service for the prior 3-month period?
- What mechanisms should the Commission consider to ensure that only eligible customers are enrolled in the program?
- Should the Commission consider a penalty mechanism for fraudulent enrollments?

Also, in making this proposal, we do not want to minimize the work of the ULTS Marketing Board. Last fall the Commission approved a contract with Richard Heath and Associates<sup>4</sup> (RHA) to conduct the marketing activities for the

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<sup>4</sup> Resolution T-16569, December 11, 2001.

ULTS program for a 12-month period. The contract requires RHA to provide a particular list of services, including a marketing program to focus on those segments of the population that current data suggests have lower telephone penetration rates. The contract also indicates that Community-Based Organizations will be used to educate low-income households about the program, and requires RHA to create multi-lingual and multi-cultural marketing and outreach campaigns, with a goal of increasing telephone penetration to 95% among all groups by means of increased ULTS subscribership by eligible households. Mr. Heath has a proven track record in designing and implementing programs like this, and we believe we will see results from this aggressive campaign. Parties should address the following:

- Is it duplicative to have marketing conducted by both CLECs and the ULTSMB?
- What can CLECs accomplish that the ULTSMB cannot?

There are some Californians who are eligible for ULTS but have had their telephone service disconnected due to nonpayment of long-distance balances or who have a bad credit history. These former customers may not be aware of a significant change in Commission policy, namely, that since May 2001, local exchange carriers may not disconnect basic telephone service for failure to pay non-basic telephone charges. Further, persons with bad debt cannot be denied telephone service nor required to pay a deposit if the customer accepts toll-blocking service. This policy change has prohibited the leveraging of basic telephone service to pay for other, non-basic services. This new policy is explained on customer disconnect notices, but beyond that, the information has not been widely disseminated. Parties should comment on the following:

- We propose that the ULTSMB require its contractor, RHA, to include a statement in its educational materials that basic access service cannot be terminated except for non-payment of

basic services and related surcharges and taxes, and that persons with bad debt cannot be denied telephone service nor required to pay a deposit if the customer accepts toll-blocking service.

- Should the Commission require that information about its disconnection policy be disseminated by RHA alone, or should this responsibility also be required of all local exchange carriers?

We make a third proposal that could assist in getting more low-income customers signed up for the ULTS program: namely, automatic enrollment of customers who are eligible for the low-income program for electric and gas customers, which is referred to as the “California Alternate Rates for Energy” or CARE program. Senate Bill 2, Chapter 11 in 2001, orders the Commission to examine methods to improve CARE enrollment and participation. The bill proposes that the Commission examine whether any customer who has signed up for the ULTS program should be automatically signed up for the CARE program. We propose that we adopt the reverse. Any energy customer eligible for and enrolled in the CARE program, will be automatically enrolled in the ULTS program. We recognize that this option for the CARE program is still in the developmental stages, and we would need to wait to see what evolves with the CARE program, before implementing anything similar for ULTS. Parties should comment on whether the Commission should explore this automatic enrollment option, along with the work of the ULTSMB, to expand the penetration rate for telephone service to low-income customers, in lieu of authorizing carriers to participate in the marketing effort.

Therefore, **IT IS RULED** that:

1. This ruling shall be served on the Service List to Rulemaking 95-01-020/Investigation 95-01-021.

2. Comments on the issues raised in this ruling shall be filed and served on May 20, 2002.

3. Reply Comments shall be filed and served on June 4, 2002.

Dated April 19, 2002, at San Francisco, California.

/s/ GEOFFREY F. BROWN

Geoffrey F. Brown  
Assigned Commissioner

/s/ KAREN A. JONES

Karen A. Jones  
Administrative Law Judge



**CERTIFICATE OF SERVICE**

I certify that I have by mail this day served a true copy of the original attached Assigned Commissioner's and Administrative Law Judge's Ruling Responding to FONES4ALL's Petition to Modify Decision 00-10-028 on all parties of record in this proceeding and in Rulemaking 95-01-020/Investigation 95-01-021 or their attorneys of record.

Dated April 19, 2002, at San Francisco, California.

/s/ KE HUANG

Ke Huang

**N O T I C E**

Parties should notify the Process Office, Public Utilities Commission, 505 Van Ness Avenue, Room 2000, San Francisco, CA 94102, of any change of address to ensure that they continue to receive documents. You must indicate the proceeding number on the service list on which your name appears.